

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

PAULA JANE NELSON

Plaintiff,

v.

CIVIL ACTION NO. 2:07-cv-00192

SCOTT PATTERSON, et al.,

Defendants.

ORDER

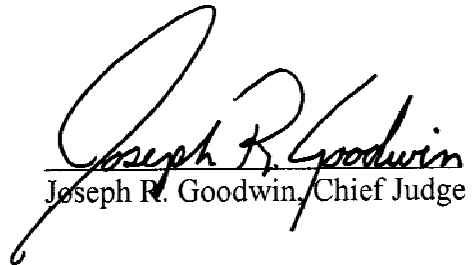
Pending before the court is the petitioner's motion under 28 U.S.C. § 2254 [Docket 2]. This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court dismiss the petition for being untimely and for failure to exhaust state court remedies.

Neither party has filed objections to the Magistrate Judge's findings and recommendation. The petitioner has, however, filed a state petition for habeas relief pursuant to W. Va. Code § 53-4A-1 [Docket 8], apparently in response to the Magistrate Judge's proposed findings and recommendation. Whatever relevance the petitioner's filing may have on the Magistrate Judge's proposed exhaustion finding, it does not change the fact that federal habeas relief is barred by the one-year statute of limitations.

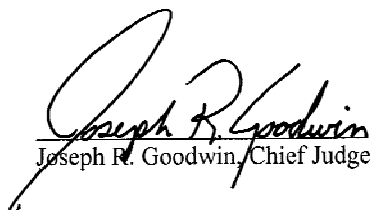
Accordingly, the court **FINDS** that the present petition is untimely under 28 U.S.C. § 2244(d)(1), **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge, and **ORDERS** that the petition be **DISMISSED**.

The court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Stanley, counsel of record, and any unrepresented party.

ENTER: November 27, 2007



Joseph R. Goodwin, Chief Judge



Joseph R. Goodwin, Chief Judge